

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013080735

ORDER GRANTING PARTIAL
MOTION TO DISMISS

On August 16, 2013, Student's parent on behalf of Student (Student) filed a request for due process hearing (complaint), naming the Newport-Mesa Unified School District (District) as the respondent.

On August 26, 2013, the District filed a motion to dismiss certain issues from the complaint on the basis that they were outside the jurisdiction of the Office of Administrative Hearings (OAH) to decide.

OAH has received no response to the motion from Student.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 701 et seq.), Section 1983 of Title 42 United States Code (Section 1983), or the McKinney Vento Act.

DISCUSSION

In addition to alleging a denial of FAPE under IDEA, Student's complaint alleges that the District violated Section 504, Section 1983, and the McKinney Vento Act.

OAH does not have jurisdiction to adjudicate claims arising under Section 504, Section 1983, or the McKinney Vento Act. Accordingly, those claims must be dismissed from the action.

ORDER

The District's motion to dismiss claims arising under Section 504, Section 1983, and the McKinney Vento Act is granted. Those claims are hereby dismissed.

The matter shall proceed as scheduled on the remaining issues arising under IDEA.

IT IS SO ORDERED.

Dated: September 5, 2013

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings